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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/147089

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 05, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 07, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner was over-issued FoodShare benefits in the amount of \$2154.00 for the period from 2/20/12 to 05/31/2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Sharon Thacker, HSPC Sr. and Belinda Bridges, IMS Advanced  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 31, 2013, the agency sent Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating he was over paid FoodShare benefits in the amount of \$2154.00, for the period of February 20, 2012 through May 31, 2012. The notice indicated that the overpayment was due to client error, specifically a failure to report/budget income. (Exhibit 4, pgs. 30-33).

3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 5, 2013.
4. Petitioner and the mother of his children had two separate and open FoodShare cases. In October/November 2011, the mother of Petitioner's children called the agency to close her case, because she moved in with Petitioner and wanted to be placed on his case. Her case was closed effective December 1, 2011. (Exhibit 4, pg. 13; Testimony of Petitioner and testimony of the mother of his children)
5. On February 21, 2012, the agency sent Petitioner a notice indicating that his household of four, which included the mother of his children, had been approved for FoodShare benefits. The notice further indicated that the agency had "no income on file for your household." (Exhibit 4, pgs. 22-27)
6. On July 2, 2012, the agency processed a six month report form (SMRF) dated June 27, 2012. No changes were reported. (Exhibit 4, pg. 13)
7. Petitioner has a household of four; there are no elderly, blind or disabled members. (Testimony of Petitioner)
8. Petitioner pays child support in the amount of \$153.00 per month. (Exhibit 4, pgs. 22-27 and 36-37)
9. Petitioner paid rent in the amount of \$600.00 per month and was responsible for paying utilities. (Testimony of the mother of Petitioner's children)

### DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also FoodShare Wisconsin Handbook, App. § 7.3.2.1. Thus, the recipient must pay back the overissued FoodShare benefits, regardless of who caused the overissuance of benefits.

Further, "all adult or emancipated minor food unit members at the time of the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household...The following are responsible for paying a claim...Each person who was an adult member of the household when the overpayment or trafficking occurred...." *FSH §7.3.1.2*; see also 7 CFR §273.11(a)(4)(i),

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

Petitioner did not quarrel with the agency's calculations; he did not dispute the fact that he received the FoodShare benefits in question, nor did he dispute the fact that the overissuance of benefits resulted because income that the mother of his children earned from Speedway was not counted in his household budget. However, Petitioner asserts that the overissuance of benefits was due to agency error, because the mother of his child did, in fact, report her income from Speedway when she called to consolidate their cases in October/November 2011.

First, Petitioner is the primary person on this case. As such, it was his responsibility to make sure everything was in order and he failed to do so; instead, he delegated the responsibility of tracking his case to the mother of his children. Second, there is no documentation in the record showing that the mother of Petitioner's children reported her income from Speedway. Third, the mother of Petitioner's children testified that neither she nor Petitioner received a request to verify her income from Speedway. Had she reported the income, the agency would have sent a request for verification of income. Finally, Petitioner received a notice in February 2012 advising him that the agency had no income on record for his household. That should have sent up a red flag

that the agency did not know about the income from Speedway. Based upon the foregoing, it is reasonable to conclude that Petitioner failed to report the income from Speedway and that the overpayment of benefits was due to client error.

### **CONCLUSIONS OF LAW**

The agency correctly determined that Petitioner was overissued FoodShare benefits in the amount of \$2154.00 for the period from 2/20/12 to 05/31/2012.

**THEREFORE, it is**

**ORDERED**

That the Petition be dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

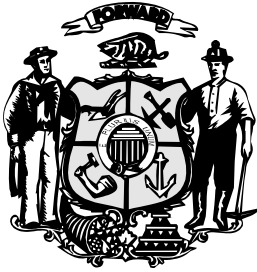
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of March, 2013.

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sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 25, 2013.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability